



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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|----------------|--------------------------|----------|------------------|
| Date Amended | 05/27/05 | Bill No: | AB 1232 |
| Tax: | Environmental Fee | Author: | J. Horton |
| Related Bills: | | | |

BILL SUMMARY

This bill would expand the imposition of the environmental fee from corporations to organizations. An organization would include, but not be limited to, a corporation, limited liability company, limited partnership, general partnership, or sole proprietorship.

Summary of Amendments

The introduced version of the bill did not impact the Board of Equalization (Board). As introduced, this bill simply expanded, from corporations to all organizations, the annual information the Department of Toxic Substances Control (DTSC) would provide to the Board to enable the Board to identify entities that are subject to the environmental fee imposed on corporations that handle hazardous materials.

ANALYSIS

Current Law

Under existing law, Section 25205.6 of the Health and Safety Code requires the DTSC to provide to the Board a schedule of codes that consist of the types of corporations in industry groups that use, generate, store, or conduct activities in this state related to hazardous materials. Each corporation of a type identified in the schedule adopted by the DTSC is required to pay an annual fee to the Board.

The environmental fee is adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the California Consumer Price Index (CCPI). The fee rates for the 2005 calendar year are as follows:

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

| Number of Employees | Annual Fee Rate |
|---------------------|-----------------|
| 1 – 49 | \$0 |
| 50 – 74 | \$243 |
| 75 – 99 | \$429 |
| 100 – 249 | \$856 |
| 250 – 499 | \$1,834 |
| 500 – 999 | \$3,425 |
| 1,000 or more | \$11,625 |

Nonprofit corporations primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care are not subject to the annual fee. Such nonprofit corporations are described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

The annual fee is paid to the Board and deposited into the state's Toxic Substances Control Account.

Proposed Law

This bill would amend Section 25205.6 to require the DTSC to provide the Board with a schedule of codes that consists of the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials. Each organization of a type identified in the schedule adopted by the DTSC would pay an annual fee if that organization employs 50 or more employees in this state for more than 500 hours during the calendar year.

An "organization" would include, but not be limited to, a corporation, limited liability company, limited partnership, general partnership, or sole proprietorship.

This bill would also require the DTSC, on or before February 1 of each year, to report to the Governor and the Legislature on the prior fiscal year's expenditure of funds within the Toxic Substances Control Account, as specified.

The bill would become effective January 1, 2006.

Background

In 1989, Senate Bill 475 (Ch. 269, Stats. 1989) added and Assembly Bill 41 (Ch. 1032, Stats. 1989) amended Section 25205.6 of the Health and Safety Code to require certain corporations involved in activities related to hazardous materials to pay an annual fee based on the number of employees employed in this state.

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Senate Bill 1469 (Ch. 852, Stats. 1992) amended 25205.6 to revise the categories for reporting the number of employees within corporations which use, generate, store, or conduct activities in this state related to hazardous materials for computing the environmental fee.

In enacting Senate Bill 1222 (Ch. 638, Stats. 1995), the Legislature required the Secretary for Environmental Protection to convene a task force to review the existing hazardous waste fee structure and provide recommendations to the Legislature no later than January 1, 1997. The task force was directed to propose a new fee system for providing financial support to California's hazardous waste and hazardous substance regulatory programs which would 1) provide protection for public health and safety and the environment; 2) provide adequate funding to ensure remediation of contaminated sites; 3) not impose a disproportionate burden on any sector of California's economy; 4) provide a level of funding that enables the DTSC to appropriately implement programs authorized by the Legislature in a manner consistent with the objectives of those programs; and 5) provide a means of funding consistent with the objectives of the DTSC's programs.

With respect to the environmental fee, the task force recommended that the fee be expanded to all business with 50 or more employees, adjusting the rate categories to make per employee costs more equitable, and that a new rate category be established for businesses with 1,000 or more employees.

Senate Bill 660 (Ch. 870, Stats. 1997), the Environmental Cleanup and Reform Act of 1997, enacted many of the recommendations of the Fee Reform Task Force by amending various sections of the Health and Safety Code. That bill amended Section 20205.6 to flatten the environmental fee rate structure to make the fee more equitable by equalizing the average rate per employee paid by corporations in each range. Additionally, that bill established a new rate category for corporations with 1,000 or more employees, decreased the Generator Fee, repealed the Generator Surcharge and various hazardous waste fees and changed several fees-for-services. For the most part, the revenue losses from the repealed fees, the changed fees-for-services and the decreased Generator Fee were estimated to offset the resulting increase in the Environmental Fee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the DTSC and is intended to address the erosion in the annual environmental fee base resulting from fewer businesses being classified as "corporations" and some corporations reclassifying themselves as limited liability companies (LLCs) and other classifications.
2. **Summary of amendments.** The introduced version of the bill did not impact the Board. As introduced, the bill simply expanded, from corporations to all organizations, the annual information the DTSC would provide to the Board to enable the Board to identify entities that are subject to the environmental fee imposed on corporations that handle hazardous materials. The **May 27, 2005, amendments** expand, from corporations to all organizations, the imposition of the environmental fee.

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3. **What is an “organization”?** This bill would define an “organization” to include, but not be limited to, a corporation, limited liability company, limited partnership, general partnership, or sole proprietorship. Since the definition of organization is not limited to the employers specified, this measure could expand the imposition of the environmental fee from corporations to all employers with 50 or more employees that are employed in this state for more than 500 hours during the calendar year. As such, the fee could be imposed upon employers such as joint ventures, associations, trusts, charitable foundations, private households, and local college clubs. It also appears that the term organization could include local and state governmental agencies.

If it is the author’s intent that the term organization include all employers with 50 or more qualified employees, it is suggested that the bill be amended to impose the fee upon each “person” since that term is defined in Section 25118 of the Health and Safety Code. The following employers would continue to be exempt from the fee:

- Nonprofit residential care facilities (SIC code 8361 or NAICS codes 623312, 62322, and 62399).
- Insurance companies that pay tax on gross premiums in lieu of all other California taxes and licenses.
- Banks that pay a tax on net income in lieu of all other California taxes and licenses.
- U.S. Government corporations.
- Nonprofit credit unions, as defined in Financial Code section 14002.

However, if the author’s intent is to limit the imposition of the fee to specific employer types, it is suggested that the term “organization” be amended to reflect that intent.

4. **Organizations would be subject to the annual fee beginning with the 2006 calendar year.** The environmental fee is an annual fee that is due and payable to the Board on the last day of the second month following the end of the calendar year. Therefore, if this bill expands the fee payer base for the environmental fee effective January 1, 2006, the first return and payment of the fee from such fee payers would be due to the Board on or before February 28, 2007.
5. **The environmental fee was held to be a tax.** In February 2004, the Third Appellate District Court of Appeal upheld the validity of the environmental fee in *Morning Star Co. v. State Board of Equalization* (2004), Cal.App.4th. The court also held that the environmental “fee” is a tax, and not a regulatory fee, because its main purpose is to raise revenue to pay for a wide range of governmental services and programs relating to hazardous waste control.

COST ESTIMATE

The Board would incur non-absorbable costs to identify and register additional fee payers, develop computer programs, revising publications, mailing and processing additional returns and payments, carrying out compliance and audit efforts to ensure proper reporting, developing regulations, training staff, and answering inquiries from the public.

Additional contract costs would also be incurred between the Board and the Employment Development Department (EDD). Currently, the Board contracts with the EDD for employer information related to corporations so that each corporation can be registered with the Board and mailed a return for purposes of the fee. If this measure were signed into law, the Board's 2006-07 contract with the EDD would increase since it would be expanded to include employer information for the new entity types subject to the fee. A detailed cost estimate of this workload is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Currently, corporations doing business in the state including nonprofit corporations, "S" corporations, and out of state corporations must register with the Board and pay an annual environmental fee. The annual fee is based on the number of employees who each worked more than 500 hours in California during the year: For 2005, the fee rate is structured as follows:

- (a) 50-74 employees = \$243
- (b) 75-99 employees = \$429
- (c) 100-249 employees = \$856
- (d) 250-499 employees = \$1,834
- (e) 500-999 employees = \$3,425
- (f) 1,000 or more = \$11,625

The Board's 2003-04 Annual Report indicates that as of June 30, 2004, 42,487 corporations were registered for purposes of the environmental fee. However, out of the 42,487 registered corporations, only approximately 33,000 corporations (77.7%) were required to pay the fee. Over 9,000 corporations did not pay the fee because, although they may have employed 50 or more people, on average their seasonal and part-time employees worked less than the 500-hour threshold. In fiscal year 2003-04 the environmental fee generated was \$30.4 million in revenue.

The Employment Development Department (EDD) 3rd quarter 2003 *Number of Businesses, Number of Employees and Third Quarter Payroll by Size of Business* table indicated of the total number of businesses (1,160,080), 4.4 percent (51,018) had 50 or more employees. This number excludes finance and insurance companies with 50 or

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more employees. However, not all of these organizations would be required to pay the fee, based on 2003-04 actual statistics above. We estimate that at least 22.3% would not be required to pay the fee because, although they may have employed 50 or more people, on average their seasonal and part-time employees will work less than 500 hours per year. Therefore, we estimate that only 39,626 (77.7% of the 51,018) organizations would be required to pay the fee. The following table illustrates the breakdown. Note that EDD has a 50-99 category, the fee is actually applied to 50-74 (\$243) and 75-99 (\$429) categories. Using another EDD table provided to the Department of Toxic Substance Control, we estimate 67% of the companies would fall under the 50-74 number of employees' category, and 33% of the companies would fall under the 75-99 number of employees' category.

| EDD 3rd Quarter 2003 Statistics | | | |
|--|-----------------------------|------------|---------------------|
| Number of Employees | Number of Businesses | Fee | Revenue |
| | | \$ | \$ |
| 50-74 | 14,041 | 243 | 3,411,963 |
| 75-99 | 6,303 | 429 | 2,703,987 |
| 100-249 | 13,164 | 856 | 11,268,384 |
| 250-499 | 3,895 | 1,834 | 7,143,430 |
| 500-999 | 1,391 | 3,425 | 4,764,175 |
| 1000+ | 832 | 11,625 | 9,672,000 |
| Total | 39,626 | | \$38,963,939 |

Revenue Summary

This proposal would generate a \$8.6 million increase in environmental fee (\$39 million minus \$30.4 million) revenues.

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| Analysis prepared by: | Cindy Wilson | 916-445-6036 | 06/23/05 |
| Revenue prepared by: | Ronil Dwarka | 916-445-0840 | |
| Contact: | Margaret S. Shedd | 916-322-2376 | |
| mcc | | | 1232-1cw.doc |

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